



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1995 ASSEMBLY BILL 438**

October 26, 1995 - Offered by Representative RILEY.

1 **AN ACT** *to renumber and amend* 347.38 (1); *to amend* 346.94 (16) (a) and
2 346.95 (1); and *to create* 66.948, 346.945, 346.95 (5e), 346.95 (5g), 347.385 and
3 347.50 (1g) of the statutes; **relating to:** the improper use of radios, electric
4 sound amplification devices and other sound-producing devices, the imposition
5 of vehicle owner liability for improper use of a horn, other warning device, radio
6 or other electric sound amplification device and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 **SECTION 1.** 66.948 of the statutes is created to read:

8 **66.948 Sound-producing devices; impoundment; seizure and**
9 **forfeiture. (1)** In this section, "sound-producing device" does not include a piece
10 of equipment or machinery that is designed for agricultural purposes and that is
11 being used in the conduct of agricultural operations.

12 **(1m)** (a) Any city, village, town or county may, by ordinance, authorize a law
13 enforcement officer, at the time of issuing a citation for a violation of s. 346.94 (16)
14 or a local ordinance in strict conformity with s. 346.94 (16) or any other local

1 ordinance prohibiting excessive noise, to impound any radio, electric sound
2 amplification device or other sound-producing device used in the commission of the
3 violation if the person charged with such violation has 2 or more prior convictions
4 within a 3-year period of s. 346.94 (16) or a local ordinance in strict conformity with
5 s. 346.94 (16) or any other local ordinance prohibiting excessive noise. The ordinance
6 may provide for impoundment of a vehicle until such time as the city, village, town
7 or county or its authorized agent removes the radio, electric sound amplification
8 device or other sound-producing device if the sound-producing device may not be
9 easily removed from the vehicle. Upon removal of the sound-producing device, an
10 impounded vehicle shall be returned to its rightful owner.

11 (b) The ordinance under par. (a) may provide for recovery by the city, village,
12 town or county of the cost of impounding the sound-producing device and, if a vehicle
13 is impounded, the cost of impounding the vehicle and removing the sound-producing
14 device. The ordinance under par. (a) shall provide that, upon disposition of the
15 forfeiture action for the violation of s. 346.94 (16) or a local ordinance in strict
16 conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive
17 noise and payment of any forfeiture imposed, the sound-producing device shall be
18 returned to its rightful owner.

19 (c) The city, village, town or county may dispose of any impounded
20 sound-producing device or, following the procedure for an abandoned vehicle under
21 s. 342.40, any impounded vehicle which has remained unclaimed for a period of 90
22 days after disposition of the forfeiture action.

23 **(2)** (a) Notwithstanding sub. (1m), any city, village, town or county may, by
24 ordinance, authorize a law enforcement officer, at the time of issuing a citation for
25 a violation of s. 346.94 (16) or a local ordinance in strict conformity with s. 346.94 (16)

1 or any other local ordinance prohibiting excessive noise, to seize any radio, electric
2 sound amplification device or other sound-producing device used in the commission
3 of the violation if the person charged with such violation has 3 or more prior
4 convictions within a 3-year period of s. 346.94 (16) or a local ordinance in strict
5 conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive
6 noise.

7 (b) The ordinance under par. (a) may provide for impoundment of a vehicle until
8 such time as the city, village, town or county or its authorized agent removes the
9 radio, electric sound amplification device or other sound-producing device if the
10 sound-producing device may not be easily removed from the vehicle. Upon removal
11 of the sound-producing device, an impounded vehicle shall be returned to its rightful
12 owner upon payment of the reasonable costs of impounding the vehicle and removing
13 the sound-producing device.

14 (c) The ordinance under par. (a) shall include provisions that treat any seized
15 sound-producing device in substantially the manner provided in ss. 973.075 (3),
16 973.076 and 973.077 for property realized through the commission of any crime,
17 except that the sound-producing device shall remain in the custody of the applicable
18 law enforcement agency; a district attorney or city, village or town attorney,
19 whichever is applicable, shall institute the forfeiture proceedings; and, if the
20 sound-producing device is sold by the law enforcement agency, all proceeds of the
21 sale shall be retained by the applicable city, village, town or county.

22 (d) The city, village, town or county may, following the procedure for an
23 abandoned vehicle under s. 342.40, dispose of any impounded vehicle which has
24 remained unclaimed for a period of 90 days after disposition of the forfeiture action.

25 **SECTION 2.** 346.94 (16) (a) of the statutes is amended to read:

1 346.94 (16) (a) Except as provided in s. 347.38 (1), no person may operate or
2 park, stop or leave standing a motor vehicle while using a radio or other electric
3 sound amplification device emitting sound from the vehicle that is clearly audible
4 under normal conditions from a distance of 75 50 or more feet, unless the electric
5 sound amplification device is being used to request assistance or warn against an
6 unsafe condition.

7 **SECTION 3.** 346.945 of the statutes is created to read:

8 **346.945 Vehicle owner's liability for radios or other electric sound**
9 **amplification devices. (1)** (a) The owner of a vehicle involved in a violation of s.
10 346.94 (16) shall be presumed liable for the violation as provided in this section.

11 (b) Notwithstanding par. (a), no owner of a vehicle involved in a violation of s.
12 346.94 (16) may be convicted under this section if the person operating the vehicle
13 or having the vehicle under his or her control at the time of the violation has been
14 convicted for the violation under this section or under s. 346.94 (16).

15 **(2)** A traffic officer may proceed under sub. (3) instead of stopping, pursuing
16 or issuing a citation to the person operating the vehicle or having the vehicle under
17 his or her control at the time of a violation of s. 346.94 (16).

18 **(3)** (a) Within 72 hours after observing the violation or receiving information
19 that provides a reasonable basis for the belief that a violation has been committed
20 or that an investigation of a possible violation is warranted, the traffic officer shall
21 investigate the violation and may prepare a uniform traffic citation under s. 345.11
22 for the violation and, within 96 hours after observing the violation or receiving
23 information that provides a reasonable basis for the belief that a violation has been
24 committed or that an investigation of a possible violation is warranted, any traffic

1 officer employed by the authority issuing the citation may personally serve it upon
2 the owner of the vehicle.

3 (b) If with reasonable diligence the owner cannot be served under par. (a),
4 service may be made by leaving a copy of the citation at the owner's usual place of
5 abode within this state in the presence of a competent member of the family who is
6 at least 14 years of age and who shall be informed of the contents thereof. Service
7 under this paragraph may be made by any traffic officer employed by the authority
8 issuing the citation and shall be performed within 96 hours after the violation was
9 observed or the traffic officer received information that provided a reasonable basis
10 for the belief that a violation had been committed or that an investigation of a
11 possible violation was warranted.

12 (c) If with reasonable diligence the owner cannot be served under par. (a) or (b)
13 or if the owner lives outside of the jurisdiction of the issuing authority, service may
14 be made by certified mail addressed to the owner's last-known address. Service
15 under this paragraph shall be performed by posting the certified mail within 96
16 hours after the violation was observed or the traffic officer received information that
17 provided a reasonable basis for the belief that a violation had been committed or that
18 an investigation of a possible violation was warranted. Except for owners who live
19 outside of the jurisdiction of the issuing authority, service under this paragraph may
20 not be performed unless service under pars. (a) and (b) has been attempted.

21 **(4)** Defenses to the imposition of liability under this section include:

22 (a) That a report that the vehicle was stolen was given to a traffic officer before
23 the violation occurred or within a reasonable time after the violation occurred.

24 (b) If the owner of the vehicle provides a traffic officer employed by the
25 authority issuing the citation with the name and address of the person operating the

1 vehicle or having the vehicle under his or her control at the time of the violation and
2 sufficient information for the officer to determine that probable cause does not exist
3 to believe that the owner of the vehicle was operating the vehicle or having the
4 vehicle under his or her control at the time of the violation, then the owner of the
5 vehicle shall not be liable under this section or under s. 346.94 (16).

6 (c) If the vehicle is owned by a lessor of vehicles and at the time of the violation
7 the vehicle was in the possession of a lessee, and the lessor provides a traffic officer
8 employed by the authority issuing the citation with the information required under
9 s. 343.46 (3), then the lessee and not the lessor shall be liable under this section or
10 under s. 346.94 (16).

11 (d) If the vehicle is owned by a dealer, as defined in s. 340.01 (11) (intro.) but
12 including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the
13 violation the vehicle was being operated by or was under the control of any person
14 on a trial run, and if the dealer provides a traffic officer employed by the authority
15 issuing the citation with the name, address and operator's license number of the
16 person operating the vehicle or having the vehicle under his or her control on a trial
17 run, then that person, and not the dealer, shall be liable under this section or under
18 the applicable provision of s. 346.94 (16).

19 **SECTION 4.** 346.95 (1) of the statutes is amended to read:

20 346.95 (1) Any person violating s. 346.87, 346.88, 346.89 (2), 346.90 to 346.92
21 or 346.94 (1), (9), (10), (11), (12), or (15) ~~or (16)~~ may be required to forfeit not less than
22 \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100
23 for the 2nd or subsequent conviction within a year.

24 **SECTION 5.** 346.95 (5e) of the statutes is created to read:

1 346.95 (5e) Any person violating s. 346.94 (16) may be required to forfeit not
2 less than \$40 nor more than \$80 for the first offense and not less than \$100 nor more
3 than \$200 for the 2nd or subsequent conviction within a year.

4 **SECTION 6.** 346.95 (5g) of the statutes is created to read:

5 346.95 (5g) A vehicle owner or other person found liable under s. 346.945 may
6 be required to forfeit not less than \$40 nor more than \$80 for the first offense and not
7 less than \$100 nor more than \$200 for the 2nd or subsequent conviction within a year.
8 Imposition of liability under s. 346.945 shall not result in suspension or revocation
9 of a person's operating license under s. 343.30, nor shall it result in demerit points
10 being recorded on a person's driving record under s. 343.32 (2) (a).

11 **SECTION 7.** 347.38 (1) of the statutes is renumbered 347.38 (1) (a) and amended
12 to read:

13 347.38 (1) (a) No person shall operate a motor vehicle upon a highway unless
14 such motor vehicle is equipped with a horn in good working order and capable of
15 emitting sound audible under normal conditions from a distance of not less than 200
16 feet, ~~but~~.

17 (b) Notwithstanding par. (a), no person shall at any time use a horn otherwise
18 than as a reasonable warning or make any unnecessary or unreasonably loud or
19 harsh sound by means of a horn or other warning device.

20 **SECTION 8.** 347.385 of the statutes is created to read:

21 **347.385 Vehicle owner's liability for horns and warning devices.** (1) (a)
22 The owner of a vehicle involved in a violation of s. 347.38 (1) (b) shall be presumed
23 liable for the violation as provided in this section.

24 (b) Notwithstanding par. (a), no owner of a vehicle involved in a violation of s.
25 347.38 (1) (b) may be convicted under this section if the person operating the vehicle

1 or having the vehicle under his or her control at the time of the violation has been
2 convicted for the violation under this section or under s. 347.38 (1) (b).

3 (2) A traffic officer may proceed under sub. (3) instead of stopping, pursuing
4 or issuing a citation to the person operating the vehicle or having the vehicle under
5 his or her control at the time of a violation of s. 347.38 (1) (b).

6 (3) (a) Within 72 hours after observing the violation or receiving information
7 that provides a reasonable basis for the belief that a violation has been committed
8 or that an investigation of a possible violation is warranted, the traffic officer shall
9 investigate the violation and may prepare a uniform traffic citation under s. 345.11
10 for the violation and, within 96 hours after observing the violation or receiving
11 information that provides a reasonable basis for the belief that a violation has been
12 committed or that an investigation of a possible violation is warranted, any traffic
13 officer employed by the authority issuing the citation may personally serve it upon
14 the owner of the vehicle.

15 (b) If with reasonable diligence the owner cannot be served under par. (a),
16 service may be made by leaving a copy of the citation at the owner's usual place of
17 abode within this state in the presence of a competent member of the family at least
18 14 years of age, who shall be informed of the contents thereof. Service under this
19 paragraph may be made by any traffic officer employed by the authority issuing the
20 citation and shall be performed within 96 hours after the violation was observed or
21 the traffic officer received information that provided a reasonable basis for the belief
22 that a violation had been committed or that an investigation of a possible violation
23 was warranted.

24 (c) If with reasonable diligence the owner cannot be served under par. (a) or (b)
25 or if the owner lives outside of the jurisdiction of the issuing authority, service may

1 be made by certified mail addressed to the owner's last-known address. Service
2 under this paragraph shall be performed by posting the certified mail within 96
3 hours after the violation was observed or the traffic officer received information that
4 provided a reasonable basis for the belief that a violation had been committed or that
5 an investigation of a possible violation was warranted.

6 (4) Defenses to the imposition of liability under this section include:

7 (a) That a report that the vehicle was stolen was given to a traffic officer before
8 the violation occurred or within a reasonable time after the violation occurred.

9 (b) If the owner of the vehicle provides a traffic officer employed by the
10 authority issuing the citation with the name and address of the person operating the
11 vehicle or having the vehicle under his or her control at the time of the violation and
12 sufficient information for the officer to determine that probable cause does not exist
13 to believe that the owner of the vehicle was operating the vehicle or having the
14 vehicle under his or her control at the time of the violation, then the owner of the
15 vehicle shall not be liable under this section or under s. 347.38 (1) (b).

16 (c) If the vehicle is owned by a lessor of vehicles and at the time of the violation
17 the vehicle was in the possession of a lessee, and the lessor provides a traffic officer
18 employed by the authority issuing the citation with the information required under
19 s. 343.46 (3), then the lessee and not the lessor shall be liable under this section or
20 under s. 347.38 (1) (b).

21 (d) If the vehicle is owned by a dealer, as defined in s. 340.01 (11) (intro.) but
22 including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the
23 violation the vehicle was being operated by or was under the control of any person
24 on a trial run, and if the dealer provides a traffic officer employed by the authority
25 issuing the citation with the name, address and operator's license number of the

1 person operating the vehicle or having the vehicle under his or her control on a trial
2 run, then that person, and not the dealer, shall be liable under this section or under
3 s. 347.38 (1) (b).

4 **SECTION 9.** 347.50 (1g) of the statutes is created to read:

5 347.50 (1g) A vehicle owner or other person found liable under s. 347.385 may
6 be required to forfeit not less than \$10 nor more than \$200. Imposition of liability
7 under s. 347.385 shall not result in suspension or revocation of a person's operating
8 license under s. 343.30, nor shall it result in demerit points being recorded on a
9 person's driving record under s. 343.32 (2) (a).

10 **SECTION 10. Initial applicability.**

11 (1) This act first applies to violations committed on the effective date of this
12 subsection, but does not preclude the counting of other violations as prior violations
13 for sentencing a person, impounding a vehicle or impounding or seizing a
14 sound-producing device or for suspending or revoking a person's operating privilege.

15 (END)